

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:09-CR-95-BO

ANTONIO NICHOLSON,)
)
 Petitioner,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
 Respondent.)

ORDER AND NOTICE


Notice is hereby given to the petitioner, Antonio Nicholson, that the Court intends to construe his letter motion to appoint counsel dated October 10, 2013 [DE 59] as a motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255. In his letter, petitioner requests the appointment of counsel to handle a matter he alleges arises as a result of *Alleyne v. United States*, 133 S. Ct. 2151 (2013). Such a claim attacks his original sentence or conviction and therefore is properly brought as a claim pursuant to 28 U.S.C. § 2255. A movant under § 2255 is not automatically entitled to counsel. *United States v. Dean*, 1991 U.S. App. LEXIS 10322, *5 (4th Cir. May 22, 1991) (unpublished). Accordingly, the Court declines at this time to appoint counsel for petitioner.

The Court GRANTS petitioner 30 (thirty) days from the filing of this notice to confirm or deny his intent to file a motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255. If a response is not filed within this time, this Court will presume that petitioner is not seeking such relief and this action will be dismissed. Should the petitioner notify this Court of his intention to file a motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255, the Clerk of Court is DIRECTED to provide petitioner with the appropriate forms on which to file such a motion.

The court further warns the petitioner of the effects of filing a motion pursuant to section 2255, and advises him as to the requirements of section 2255. *See Castro v. United States*, 540 U.S. 375, 377, 383 (2003); *see also United States v. Emmanuel*, 288 F.3d 644, 649 (4th Cir. 2002).

SO ORDERED,

this 9 day of ~~March~~ ^{May}, 2014.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE